



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,011	02/10/2004	Pier Giorgio Vicario	1427-2	9089
23869	7590	06/10/2005		
HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791			EXAMINER SMITH, RICHARD A	
			ART UNIT 2859	PAPER NUMBER

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PM

Office Action Summary

Application No.

10/776,011

Applicant(s)

VICARIO, PIER GIORGIO

Examiner

R. Alexander Smith

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-7,9 and 10 is/are rejected.
- 7) ☒ Claim(s) 8 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 9 and 10 are finally rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 4,646,663 to Needs.

Needs discloses the limitations of claims 1, 3, 9 and 10 when the graduated plane is 32 of figure 8.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2859

4. Claims 5 and 6 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Needs.

Needs teaches all that is claimed as discussed in the above rejections of claims 1, 3, 9 and 10 except for the bar and the cursors being made of aluminum alloy.

With respect to claims 5 and 6, i.e., the bar and the one or more cursors being of aluminum alloy: the Applicant's limitations regarding the bar and cursors being of aluminum alloy are only considered to be the use of "optimum" or "preferred" materials that a person having ordinary skill in the art at the time the invention was made using routine experimentation would have found obvious to provide to make the bar and cursors disclosed by Needs since they are well known types of materials used to make devices and since it has been held to be a matter of obvious design choice and within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use of the invention, In re Leshen, 125 USPQ 416. In this case, because aluminum alloy is widely available, fairly strong and relative cheap to acquire and form.

5. Claim 7 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Needs in view of U.S. 5,771,597 to Hopf.

Needs teaches all that is claimed as discussed in the above rejections of claims 1, 3, 9 and 10 except for the lower part being provided with a reinforcement core with rhomboidal structure made of aluminum alloy.

Hopf discloses a measuring device and teaches any part can be provided with ribs for reinforcement and with cavities to reduce weight and that the device can be constructed of plastic or light metal (column 3, line 9-16). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the bar, taught by Needs, to include a larger cross section and a reinforcement core, as suggested by Hopf, in order to provide an elongated body having increased stability and rigidity while reducing the overall weight.

With respect to the reinforcement core having a rhomboidal structure, as claimed: This structure is only considered to be an obvious modification of a truss or reinforcement core, as suggested by Hopf, because the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide. In re Dailey, 149 USPQ 47 (CCPA 1976).

With respect to the reinforcement core being of aluminum alloy: the Applicant's limitations regarding the core being of aluminum alloy are only considered to be the use of "optimum" or "preferred" materials that a person having ordinary skill in the art at the time the invention was made using routine experimentation would have found obvious to provide to make the core disclosed by Needs as modified by Hopf, since they are well known types of materials used to make devices and since it has been held to be a matter of obvious design choice and within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use of the invention, In re Leshen, 125 USPQ 416. In this case, because aluminum alloy is widely available, fairly strong and relative cheap to acquire and form.

Response to Arguments

6. Applicant's arguments filed 18 March 2005 with respect to claims 1, 3, 5-7, 9 and 10 have been considered but are moot in view of the new ground(s) of rejection.

With respect to claim 7 and the rhomboidal structure: The applicant also discloses various triangular structures that work in conjunction with said rhomboidal structures to form the reinforcement core. Hopf discloses that flanges and/or flanges in combination with cavities of various triangular shapes and one trapezoidal shape can be used. Therefore, the rhomboidal structure as claimed is only considered to be an obvious modification of a truss or reinforcement core, as suggested by Hopf, because the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide. In re Dailey, 149 USPQ 47 (CCPA 1976).

Allowable Subject Matter

7. Claims 8 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

Art Unit: 2859

8. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The prior art cited in PTO-892 and not mentioned above disclose related tools.

Art Unit: 2859

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. Alexander Smith whose telephone number is 571-272-2251.

The examiner can normally be reached on Monday through Friday from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'R. Alexander Smith', with a long horizontal flourish extending to the right.

R. Alexander Smith
Patent Examiner
Technology Center 2800

RAS
June 9, 2005